IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 104 of 2004

Between:

Ch.A.N.Raju, Promoter of M/s.Rajasree Agro Service Centre,
Unit 40-A, Electronics Complex (ECIL-P.O),
R.R.Dist., Hyderabad-500 062.

..... PETITIONER

AND

1 The Managing Director, APSFC, P.B.No.165, Abids, Hyderabad-1.
2 Senior B.M. (R.R.East), APSFC, Chirag Ali Lane, Abids, Hyderabad-1.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction, particularly one in the nature of writ of mandamus direction & to set aside the sale notice dt. 28-8-03 demanding Rs.18,94,740 as illegal, unconstitutional & violates justice and supra previous orders of this Court; appropriately stay the respondents, herein, not to seize and sell by taking possession of Unit-40-A in Electronics Complex, (ECIL), R.R.District, Hyderabad, 500 062; direct the respondents to refund the amounts Rs.87,500/- and Rs.75,000/- with interest thereon; allow the waival of interest on SSI sick units as per the RBI Circulars;

Counsel for the Petitioner: PARTY-IN-PERSON

Counsel for the Respondents : Ms.Y.N.LOHITA

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.104 of 2004

O R D E R :

The petitioner, who is owner of M/s. Rajasree Agro Service Centre, filed this Writ Petition, *inter alia,* seeking a Writ of Mandamus declaring the sale notice dated 28.08.2003 as illegal and also as against the action of the respondents in seeking to seize and sell the unit at 40-A in Electronics Complex (ECIL), Ranga Reddy district, Hyderabad as invalid and further for refund of the amounts of Rs.87,500/- and Rs.75,000/- with interest thereon, and ultimately seeking waiver of interest.

The petitioner's grievance is that it had obtained a term loan of Rs.87,500/- including Rs.12,600/- for development of a new product as Venture Capital norm. However, subsequently, a credit squeeze was made by the bank, which led to abandonment of novel scheme. The petitioner, who is appearing party-in-person, made various allegations in the affidavit filed in support of this Writ Petition and also subsequent affidavits both in reply and otherwise, in support of its claim that the entire action on the part of the respondents is totally illegal and contrary to the orders passed by this Court in the earlier Writ Petitions. The petitioner referred to the orders passed by this Court in W.P. No. 4812 of 1992, dated 20.10.1992; W.A. No. 183 of 1993, dated 01.03.1993; W.A. No. 235 of 1993, dated 16.03.1993; and W.P. No.15 of 1993, dated 17.10.1996, and further on the observations made by the Apex Court in S.L.P. (c) No.7697 of 2001, dated 08.08.2001 as reported in A.I.R. 2001 SC 2790. The petitioner further submits that the very demand of the amounts under the sale notice dated 28.08.2003 is not correct and there is no justification for the action of the respondents in seizing and trying to sell the unit.

It is the further case of the petitioner that there is a clear breach on the part of the respondents in violating the orders passed in the aforesaid matters. Thus, the petitioner requests for restoration of possession of the unit and write off of the entire term loan and refund of the amounts paid. Hence, this Writ Petition.

In the counter affidavit filed by the respondents, it is stated that the very Writ Petition is not maintainable having regard to the directions given earlier to approach the Civil Court. The petitioner had filed O.A.No.127 of 2003 claiming by way of damages informa pauperis. The term loan of Rs. 87,500/- and a soft loan of Rs.25,000/-, were sanctioned on 14.10.1980 & 11.11.1980 respectively, for enabling the petitioner to manufacture a rice transplantation machine and the same was duly disbursed to him, and the same is secured by the equitable mortgage executed by the petitioner in respect of the land, buildings and plant & machinery on 16.01.1981. The petitioner, in terms of the orders of this Court in the earlier proceedings, paid only Rs.81,271.90 ps. Even though sufficient time has been granted to the petitioner, he failed to comply with the same in making the payment. The petitioner filed O.P. No. 78 of 1991 on 22.10.1991 before the Consumer Disputes Redressal Commission and the same was dismissed on 24.04.1992. In the subsequent proceedings also, the petitioner was directed to pay certain amounts, but, he is showing supine indifference. Thus, having failed to comply with the earlier orders in making discharge of his liability, the petitioner is not entitled for any indulgence from this Court. Further, it is pointed out that the respondents are entitled to charge interest as per law. On failure of the petitioner to pay the amount, the unit was seized after issuing recall and sale notice. It was stated that in the circumstances, the petitioner is not entitled for any indulgence from this Court.

Having considered the submissions made by the petitioner, who appeared in person, and also taking into consideration the submissions made on behalf of the respondents, the petitioner's main grievance centers around the complaint that it is only due to inaction on the part of the respondents, the petitioner's venture could not succeed and as a result, he is entitled to the relief as sought for. In support, the petitioner refers to various proceedings and complains that the directions have not been complied. Similarly, on behalf of the respondents, it is pointed out that in spite of the directions, the amounts have not been paid and so, they are entitled to make proper demands and that the action taken by the respondents is perfectly well within the provisions of the State Finance Corporation Act.

On appraisal of the chequered events as pointed out by both sides, it is seen that the petitioner has been fanatically making efforts to avail some relief in regard to discharge of his liability of loans obtained by him from the respondents. Apparently, the entire exercise could not see the light of the day nor the petitioner could succeed to make the unit functioning. It is seen that the project undertaken by the petitioner was invention of a rice transplanater-cum- injector, which could have contributed to the increased production of food grains. The petitioner takes credit for the invention and manufacture of proto-type machine. Be that as it may, there is no dispute to the availment of loan by him from the respondents, as long back as on 14.10.1980 and 11.11.1980, and execution of mortgage in respect of the land, building and unit. In view of the same, the petitioner can not wriggle out of the obligations created thereunder and can not take any shelter as such. However, in regard to any closure or other benefits, which he could be provided for all along, it is for the respondents to consider the same and give any benefit. Having regard to the nature and scope of enquiry under Article 226 of the Constitution of India, this Court can not go into all such intricate facts nor can extend any indulgence thereunder. Therefore, in the circumstances, it would meet the ends of justice if the petitioner is permitted to make a representation in this regard to the respondents, which shall be considered by them from a proper perspective.

In the circumstances, the Writ Petition is, accordingly, disposed of with a direction to the petitioner to submit his representation to the respondents within a period of four weeks from today, stating all the reasons, facts and circumstances, and seek relief to which he is entitled to, and on receipt of such representation, the same shall be considered and disposed of by the respondents from a proper perspective in accordance with law after giving opportunity to the petitioner.

(B.Prakash Rao, J.)

06.12.2004

DRK

Copy to:

1 The Managing Director, APSFC, P.B.No.165, Abids, Hyderabad-1.
2 Senior B.M. (R.R.East), APSFC, Chirag Ali Lane, Abids, Hyderabad-1.

3 Two CD copies.